1940

Book Review: Jurisprudence of the General Claims Commission United States and Mexico

Edwin Borchard
Yale Law School

Follow this and additional works at: https://digitalcommons.law.yale.edu/fss_papers

Part of the Law Commons

Recommended Citation
https://digitalcommons.lawyale.edu/fss_papers/3651

This Book Review is brought to you for free and open access by the Yale Law School Faculty Scholarship at Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship Series by an authorized administrator of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
practical experience but a devotion and personal interest which endow it with something of a human document seldom suggested by works of this nature. The titles of each volume adequately suggest their scope, except that it is necessary to point out that the material deals with other countries—especially Great Britain—than the United States, and with international conventions and such like: It would, however, minimize the great importance of the volumes to leave them with a mere reference to their contents. These, indeed, cannot be dealt with in detail. Their importance lies in the fact that they provide an excellent source-book in a subject which law schools unfortunately neglect. The broad headings of the volumes at once suggest this point of view; but a mere glance through them will disclose the invaluable width of the material selected in connexion with law courses. The selection is enhanced by Professor Abbott's careful editing, and her introduction and comments not only hold the document together, but raise points for discussion. The volumes are, then, no mere tools for social workers; they ought to be invaluable for jurists and lawyers, if they wish to know something of life as it is, not as it is illustrated in the courts. We often wonder why domestic relations—including all aspects of child life—is such a Cinderella in our law schools. Hours upon hours can be spent on some minute rule in land law, or in trying to find out what Mr. Justice Obscure meant—and that is oftenest nothing—to the neglect of the study of those aspects of law which far more profoundly touch life in substance and in administration. We offer our sincerest thanks to Miss Abbott for a collection of documents made with the finest discrimination—for what is given; and for their suggestiveness—for what is not given. The referencing and indexing are admirable.


Dr. De Beus in this volume presents an analytical study of the opinions, about 145 in number, handed down by the general claims commission, United States and Mexico, between approximately 1925 and 1931, when the commission suspended its work, leaving the bulk of its claims undecided. The author does not mention the fact that the two governments in 1934 undertook to settle the outstanding claims by submitting them, evidenced and fully briefed, to the consideration and hoped-for agreement of two commissioners with provision for the later submission to an umpire or a lump sum compromise of the unsettled claims (cf. 30 American Journal of International Law, at p. 99). The valuable unpublished report of the American commissioner, Mr. Oscar Underwood, Jr., on the work of the two commissioners, who found themselves unable to agree on many of the claims, warrants publication.

Our author, whose native language is apparently Dutch, confines his examination of the international responsibility of the state to the decisions of a single claims commission. Nevertheless, for critical and comparative purposes he adduces the doctrinal opinions of specialists and occasionally of prior commissions. He makes but little use of the decisions of the parallel British-Mexican Claims Commission. His main contributions appear to be embraced in the chapters on jurisdiction of the Commission, the Calvo clause, denial of justice, and causation and indirect damage.
Here he has set up ingenious criteria for re-defining denial of justice and "direct" and "indirect" liability of the state. "International delinquency," a term the author frequently uses, is not given the critical examination it deserves, inasmuch as the term is likely to mislead. By no means every injury to an alien, even by an official, is an "international delinquency." One of the author's most penetrating analyses lies in the table concerning causation and indirect damage, by which he means either remote damage to the victim or damage suffered by a third person (fellow-national of the victim or other alien) through injury to the victim. Except for unredressed injuries to property, it still does not seem to the reviewer that torts against the person of an alien, such as killing or assault, can give rise to liability to states other than that to which the killed or injured person owed allegiance.

It seems to the reviewer that the author accepts as "international law" the terms of the agreement of September 8, 1923, by which each government was made liable "for losses or damages originating from acts of officials or others acting for either government and resulting in injustice." This has led him to conclude that any tort committed by a minor official immediately involves the international responsibility of the state. If this were international law it would go beyond all rules of municipal state liability, even the advanced system of France. It is submitted that it is not international law, made even less so by the fact that article 5 of the convention excluded the necessity of resort to local remedies. The author's doubts on the effect of the local remedy rule as a condition precedent or subsequent to the validity of an international claim is answered by article 5 itself, which points out that the parties by their agreement authorize the commission to disregard the "general principle of international law that the local remedies must be exhausted as a condition precedent to the validity or allowance of any claim." The requirement of exhaustion of local remedies has many exceptions, and is by no means a mechanical rule. It may be argued that the two countries considered the exhaustion of local remedies impractical in all cases, hence absolved the commission from the necessity of inquiring into this normally essential condition of an international claim. But its complete omission, plus the rule that the state is liable for all injuries of its officers, makes the decision of the commission on these questions not international law, but a kind of fire-side equity, the tribunal functioning as a domestic tribunal might. It also has misled commentators into characterizing as an "international delinquency" injuries inflicted by officers upon aliens. As a rule, there is nothing international about such assaults. They may become international by subsequent discriminations or defective administration of justice. But the commission was denied the opportunity or necessity of making this analysis by the plain words of the agreement. Commentators, however, should have noted these distinctions. Thus, the author concludes that the state's international responsibility is not diminished by the fact that it punishes the delinquent officer, whereas in principle the reviewer believes such punishment to have a vital bearing on international responsibility. The author, in spite of his wide reading, seems unacquainted with the Harvard research draft on responsibility of states, with the draft and report submitted to the Institute of International Law at its Cambridge meeting in 1931, and naturally could not take into account the recent valuable book of Alvin Freeman on The International Responsibility of States for Denial of Justice (1938).

Notwithstanding these criticisms, the author's analysis of the legal problems raised by the cases decided by the commission will be of value in the development of the subject. His criticism of the reasoning of the several commissioners in different cases is the most exhaustive yet published. Typographical errors are not infrequent.
On p. 266, for “former” read “latter,” and in the last paragraph, for “direct” (first time) read “indirect” (semble). The many distinctions between indirect and direct responsibility tend to become confusing, as in the phrase (p. 128) “indirect state liability as a direct liability of the state for its own acts or omissions,” the author’s description of Presiding Commissioner Van Vollenhoven’s views.

EDWIN BORCHARD
Yale University Law School.


_Trade Associations in Law and Business._ By B. S. KIRSH in collaboration with H. R. SHAPIRO. New York: Central Book Co. 1938. Pp. 399. ($5.00)

While the common law invented that gentleman of impeccable character, “the reasonable man,” it was left to the common-law text writer to inflict upon us “the practical lawyer.” Not for him the strong meat of juristic thought or the heady wine of legal realism. His food is pabulum, easily digested, lest he be troubled by nightmares. If the legal profession is made up of such creatures, it were well that the administration of justice passed into more capable hands and that soon. These statements are prompted by the motherly solicitude with which Miss Dix attempts to shield us from the harsh realities of the law of competitive trading—nine pages devoted to conspiracy to injure, eight to combination to forward trade, ten pages to lawful compulsion, nine to unlawful intimidation. The “vexed and much debated” problems of the famous trilogy are disposed of in seven pages, because they are too academic for “a book which seeks mainly to show the practical issues,” and all these issues are settled neatly by weaving a tapestry of citations from the judgements. Inconsistencies in the judgements, conflicting principles, in fact all things that might wrinkle the brow of the “practical lawyer” are brushed aside. The law is clear; there are only difficulties in application, Lord Dunedin’s reference to the prayer of Ajax notwithstanding (_Sorrell v. Smith_, [1925] A.C. 700, at p. 716).

Value there undoubtedly is in this monograph. We have no hesitation in recommending it as an excellent skeleton for a work on competitive trading. The subject, especially those phases covered in the last half of the volume, has been neglected too long in its industrial and commercial aspect. The taste we have had whets our appetite for more. Perhaps Miss Dix could leave the “practical lawyer” in his swaddling-clothes and prepare a treatise on competitive trading which might take its place with the leading common-law treatises. That the author is capable of undertaking this task is demonstrated by the manner in which the last half of the book is written. There she appears less self-conscious and she shows a fuller appreciation of the problems, both legal and economic, which must be taken into account in this field.

It is refreshing to turn from the legalism of Miss Dix to the social awareness